सत्यमेव जयते	राजस्थान राजपत्र विशेषांक	RAJASTHAN GAZETTE Extraordinary
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भाग 5 (घ)

भारत के निर्वाचन आयोग की विज्ञप्तियां आदि।

(निर्वाचन विभाग)

अधिसूचना

जयपुर, सितम्बर 01, 2023

संख्या एफ.4(1)(10)प्रथम/निर्वा./2019/4835:– भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/राजस्थान–वि0स0/(4/2019)/2023 दिनांक 16 अगस्त, 2023 मय माननीय राजस्थान उच्च न्यायालय (जोधपुर बैंच) के निर्णय दिनांक 04 अप्रैल, 2023 जिसमें (4) सूरतगढ़ विधानसभा निर्वाचन क्षेत्र की निर्वाचन अर्जी संख्या 4/2019 का निर्णय समाविष्ट है, को सर्वसाधारण के सूचनार्थ प्रकाशित किया जाता है।

प्रवीण गुप्ता,
प्रमुख शासन सचिव

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली–110001

तारीख :– 16 अगस्त, 2023
25 श्रावण, 1945 (शक)

अधिसूचना

सं0 82/राजस्थान–वि0स0/(4/2019)/2023: लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 4/2019–श्री महावीर प्रसाद पारीक बनाम श्री रामप्रताप कसानिया व अन्य में राजस्थान उच्च न्यायालय (जोधपुर बैंच) के तारीख 04 अप्रैल, 2023 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

अश्वनी कुमार मोहल,
सचिव,
भारत निर्वाचन आयोग

SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi - 110001.

Dated:- 16th August, 2023
25 Sravana, 1945 (Saka)

NOTIFICATION

No. 82/RJ-LA/(4/2019)/2023/:- In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes judgment dated 04.04.2023 of the High Court of Rajasthan (Jodhpur Bench) in S.B. Election Petition No. 4 of 2019- Sh. Mahaveer Prasad Pareek Vs. Sh. Rampratap Kaslaniya and ors.

By order,

ASHWANI KUMAR MOHAL
SECRETARY
ELECTION COMMISSION OF INDIA

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Election Petition No. 4/2019

Mahaveer Prasad Pareek @ Tiwari S/o Shri Sohan Lal, Aged About 61 Years, R/o Ward No. 19, Uttam Nagar, Behind S.b.I. Bank, Suratgarh, District Sri Ganganagar.

----Petitioner

Versus

1. Rampratap Kaslaniya M.L.A., Suratgarh Contituency, R/o Village Jhakarawali, Tehsil Pilibanga, At Present R/o Ward No. 19, Suratgarh, District Sriganganagar.
2. Hanuman Meel S/o Shri Hajari, B/c Jat, R/o House No. 5, Chak 5 N.R.D. (Gram Panchayat Mirana) Tehsil Suratgarh, District Sri Ganganagar
3. Om Rajpurohit, B/c Rajpurohit, R/o Ward No. 17, Near Jagdamba School, Suratgarh, District Sri Ganganagar.
4. Dungar Ram Gedar, R/o Village 22 L.G.W., Post Dhaba Jhalar, Tehsil Suratgarh, District Sri Ganganagar
5. Krishan Kumar, R/o Ward No. 31, Prem Nagar, Hanumangarh Town, District Hanumangarh.

6. Gopi Ram, R/o 15 S.G.R., Tehsil Suratgarh, District SriGanganagar

7. Nand Kishore, R/o 3 T.T.D., V.P.O. Thethar, Tehsil Suratgarh, District Sri Ganganagar.

8. Satya Prakash, R/o Ward No. 6, Suratgarh, District SriGanganagar.

9. Dharampal, R/o Chak 8 S.D. Post Jankidaswala, Tehsil Suratgarh, District Sri Ganganagar.

10. Pawan Kumar Mishra (P.K. Mishra), R/o Ward No. 23, Badopal Road, Pipal Chowk, Suratgarh, District Sri Ganganagar.

11. Pitambar Dutt Sharma, R/o House No. 1/120, Rajasthan Aawasan Mandal Colony, Suratgarh, District SriGanganagar

12. Bhawani Shanker, R/o 3 T.T.D. (B), Tethar, Tehsil Suratgarh, District Sri Ganganagar

13. Sharwan Ram, R/o Chak 1 D.O.(Hinjrasar) Tehsil Suratgarh, District Sri Ganganagar

14. Satyapal Meghwal, R/o Ward No. 31, Ambedkar Nagar, Suratgarh, District Sri Ganganagar.

15. Returning Officer, Suratgarh Legislative Assembly, District Sri Ganganagar Through Sita Sharma, S.D.M. Suratgarh, District Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. N.L. Joshi Ms. Kirti Pareek

For Respondent(s) : Mr. Sunil BeniwalMr. Sudhir Tak
Mr. Harshit BhuraniMr. Dinesh PurohitMr. Baltej Singh
Mr. Chandraveer singhMr. Sameer Pareek

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

JUDGMENT

Judgment reserved on : 29.03.2023

Judgment pronounced on : 04.04.2023

The case is listed on an application preferred by respondent No.1 -Rampratap Kaslaniya under Order 7 Rule 11 C.P.C. read withSection 83 of The Representation of the

People Act, 1951 as well as on the application preferred by the respondents under Order 1 Rule 13 CPC read with Section 86 of the Representation of the People Act, 1951.

Briefly, the facts in the present Election Petition are that the instant Election Petition has been preferred under Sections 80, 81, 100(1)(B) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act of 1951"), whereby, a challenge has been made to the Election of the respondent No.-1 (Rampratap Kaslaniya) as Member of the Legislative Assembly (MLA) of Suratgarh (No.4), District Sri Ganganagar in pursuance to the Rajasthan Legislative Assembly Election, 2018. The result of the Rajasthan Legislative Assembly Election-2018 was declared on 11.12.2018 and the respondent No.1-Shri Rampratap Kaslaniya was declared as Member of Legislative Assembly (M.L.A.) of Suratgarh (No.4), District Sri Ganganagar.

Aggrieved of the same, the present Election Petition was filed by the Election Petitioner before this Court on 13.01.2019. The notices of the Election Petition were issued by this Court on 25.02.2019. After service of notices upon the respondents, certain applications were filed by the respondents which are as under :-

I.A. filed by Respondents		
I.A. No.	**Date**	**Details of application**
01/2019	14.02.2019	Application under Section 151 C.P.C. on behalf of respondent No.16 seeking permission for release of EVMs and VVPATs used for Suratgarh (No.4) of District Sri Ganganagar of Rajasthan Legislative Assembly Elections held on 07.12.2018 and the results of which were declared on 11.12.2018. ***(The said application No. 01/2019 has already been dismissed by this Court asnot pressed on 25.02.2019)***
02/2019	23.07.2019	Application U/S. 86 of Representation of the People Act, 1951 read with Order 1 Rule 13 C.P.C. filed by the respondent No.1 seeking dismissal of the Election Petition on the ground of mis-joinder of parties.
03/2019	23.07.2019	Application Under Order 7 Rule 11 C.P.C. along with Section 83 of the Representation of the People Act, 1951 read with Section 151 C.P.C. filed by the respondent No.1 seeking dismissal of the Election Petition on the ground of No Cause of Action and non-compliance of mandatory provisions.
04/2019	22.10.2019	Application filed on behalf of respondent No.15 for deleting the name of respondent No. 15 from the array of respondents. ***(The said application No. 04/2019 has been allowed by this Court vide orderdated 13.09.2021)***

01/2020	13.10.2020	Application filed on behalf of respondent No.16. for deleting the names of respondent Nos. 15 & 16 from the array of respondents.

Heard learned counsel for the parties.

Learned counsel for the respondent No.1, while arguing the application under Order 7 Rule 11 C.P.C. read with Section 83 of The Representation of People Act, 1951 has vehemently argued that a bare perusal of the election petition goes to show that it does not disclose a cause of action, the pleadings are laconic and the allegations levelled are bald, without any facts much less no evidence in support of the allegations levelled in the electionpetition. He further submits that the election petition has been filed solely on the ground that corrupt practices were adopted by the respondent Nos. 1, 2 & 3. He also submits that the only allegation against the respondent Nos.1 to 3 is that the name of the petitioner was wrongly shown in their pamphlets/posters and other election materials and for this reason, he lost the election. Learned counsel submits that out of 15 candidates, therespondent No.1 secured 69,032 votes as against the petitioner, who secured 289 votes only. The number of votes received by the petitioner shows that he was nowhere near the respondent No.1 what to talk about any contest between the respondent No.1 and the petitioner.

Learned counsel for the respondents submits that the allegations in the election petition are vague and very casual. Even the allegation of corrupt practice does not disclose full statement of possible details of each and every such corruptpractice adopted by the respondents. Merely by ascertaining that corrupt practices were adopted by the respondents would not be sufficient to bring home the allegation as proper facts and evidence in support thereof is required to be placed on record. The allegations in the election petition lacks support of a single material fact and fails to disclose a cause of action as mandated under Order 7 Rule 11 (a) of the C.P.C.

Learned counsel for the respondent No.1 submits that corrupt practices are mentioned under Section 123 of the Act of 1951 and a plain reading of Section 123 of the Act shows that the allegation in the present election petition does not fall within the ambit of the provisions of Section 123 of the Act and, therefore, the same cannot constitute corrupt practices as per the provisions of the Act of 1951.

Learned counsel further submits that as per Section 83 of the Act of 1951, the election petition is required to contain a concise statement of material facts on which the

petitioner relies and shall set forth full particulars of any corrupt practice that the petitioner arises including as full statement as possible of the names of the parties alleged to have committed such corrupt practices and the date and the place of commission of each such practice. He submits that a bare perusal of election petition shows that neither any statement in support of the allegation has been mentioned in detail nor any precise particulars about date and place of commission of such practice have been mentioned. Thus, the election petition itself does not contain the contents as per Section 83 of the Act of 1951.

In support of his contentions, learned counsel for the respondent No.1 relied upon the following judgments of the Hon'ble Supreme Court :-

1. **Azhar Hussain V/s Rajiv Gandhi**

   reported in 1986 (SUPP) SCC 315
2. **Dhartipakar Madan Lal Agarwal V/s Rajiv Gandhi**

   reported in 1987 Supp SCC 93
3. **Anil Vasudev Salgaonkar V/s Naresh Kushali Shigaonkar reported in (2009) 9 SCC 310**
4. **V. Narayanaswamy V/s C. P. Thirunavukkarasu**

   reported in (2000) 2 SCC 294
5. **Rahim Khan V/s Khurshid Ahmed and others**

   reported in (1974) 2 SCC 660
6. **C.P. John V/s Babu M. Palissery**

   reported in (2014) 10 SCC 547

Learned counsel for the respondent No.1 states that since the election petition does not disclose a cause of action and, therefore, the application preferred under Order 7 Rule 11 of the C.P.C. is prayed to be allowed and the election petition is prayed to be dismissed.

Reply to the application preferred under Order 7 Rule 11 read with Section 83 has been filed by the election-petitioner.

Learned counsel for the petitioner while opposing the submission made by the learned counsel for the respondent No.1 submits that in the election petition, it has been clearly mentioned that corrupt practice was adopted by the respondent Nos. 1, 2 & 3 as incorrect name of the petitioner was shown on the pamphlets/posters to create confusion in the minds of voters. He also submits that the case of the petitioner squarely comes

under sub clause(4) of Section 123 of the Act which shows that the publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believed to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal being a statement reasonably calculated to prejudice the prospects of that candidate's election. In the present case since the name of the petitioner was wrongly reflected in the pamphlets/posters creating prejudice to the prospects of the petitioner and on account of the confusion created by the respondent Nos. 1, 2 & 3 in the minds of voters, therefore, the petitioner could not secure more votes.

Learned counsel for the petitioner vehemently submitted that on account of corrupt practices employed by the respondent Nos. 1, 2 and 3 in the Legislative Assembly Election 2018, the election petitioner lost the election and respondent No.1 was declaredelected. The learned counsel has vehemently submitted that the name of the petitioner was shown as "Mahaveer Prasad Pareek @ Tiwari" in the Electoral Roll of his ward and considering his this name, the Returning Officer correctly published his name as "Mahaveer Prasad Pareek @ Tiwari" in the list of contesting candidates. Learned counsel has argued that the respondent Nos. 1, 2 & 3 have shown the name of the petitioner as "Mahaveer Prasad Pareek @ Shivaji" in the pamphlets, posters and other election material just to create suspicion among his voters with the intention to secure more votes in their favour. Since, his correct name is "Mahaveer Prasad Pareek @ Tiwari" and he was contesting Legislative Assembly Election for 2018 from his Ward and is having reputation, following and youth support for winning the election but on account of corrupt practices employed by the respondent Nos. 1, 2 & 3, he could not succeed in winning the Suratgarh Seat. Learned counsel submits that due to this malpractice, the petitioner suffered materially and secured 289 votes only. The wrong mentioning of the name of the petitioner in the pamphlets, posters and other election material tantamounts tocorrupt practices as has been defined under Section 100(B) of the Act of 1951. He submits that if the respondents would not have adopted such corrupt and malpractice, the petitioner would have secured more votes. He, therefore, prays that the application preferred by the respondent No.1 under Order 7 Rule 11 of the C.P.C. may be rejected.

Interim reply to the Election Petition has also been filed on behalf of the respondent No.16.

I have considered the submissions made at the Bar and perused the material available on record.

For better understanding of the controversy involved in the present case, Section 83 and Section 123 of the Act of 1951 are reproduced as under:-

"83. Contents of petition.—(1) An election petition—

(a) ***shall contain a concise statement of the material facts on which the petitioner relies;***

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each suchpractice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

*"**123. Corrupt practices.**—The following shall be deemed to be corrupt practices for the purposes of this Act:— 3*
[(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being acandidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from

voting; (B) the receipt of, or agreement to receive, any gratification, whether asa motive or a reward—

(a) *by a person for standing or not standing as, or for 6 [withdrawing or not withdrawing] from being,a candidate; or*

(b) *by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate 4 [to withdraw or not to withdraw] his candidature. Explanation.— For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]*

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as isreferred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national

symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: 2 [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission ofSati (Prevention) Act, 1987 (3 of 1988).]

(4) The publication by a candidate or his agent or by any other person 4 [with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, 5 * * * of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate'selection.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person 4 [with the consent of a candidate or his election agent], 6 [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll: Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power: Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming

from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause. Explanation.— In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 1 [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, 2 [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:—

(a) *gazetted officers;*

(b) *stipendiary judges and magistrates;*

(c) *members of the armed forces of the Union;*

(d) *members of the police forces;*

(e) *excise officers;*

[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]

(g) such other class of persons in the service of the Government as may be prescribed: 4 [Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;]

[(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]

[(8) booth capturing by a candidate or his agent or other person.]

Explanation.—

*(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. (2) For the purposes of clause (7) a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent 1 * * * of that candidate.]*

(3) For the purpose of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.]

[(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.]"

The only allegation levelled in the election petition is with respect to the corrupt practice adopted by the respondent Nos. 1, 2 & 3 by publication of name of the petitioner as "Mahaveer Prasad Pareek @ Shivaji" in the pamphlets/posters instead of "Mahaveer Prasad Pareek @ Tiwari" resulted into the petitioner receiving only 289 votes as the confusion was created in the minds of voters by the respondent Nos. 1, 2 & 3 by adopting corrupt practice. It is further alleged that although the correct name of the petitioner is "Mahaveer Prasad Pareek @ Tiwari" which is correctly shown in the Electoral Roll and in the nomination form but the respondent Nos. 1, 2 & 3 got the pamphlets/posters printed in the name of "Mahaveer Prasad Pareek @ Shivaji" just to confuse the voters and take the mileage on this count for winning the election.

The averments made in the election petition show that except this allegation, neither any factual details has been mentioned nor any cogent evidence has been pleaded

and placed on record that in the pamphlets/posters, the incorrect name was got printed by the respondent Nos. 1, 2 & 3. Unless it is shown that such material was prepared by the respondent Nos. 1, 2 & 3 or their any agent, the same cannot be attributed to the respondent Nos. 1, 2 & 3. It is noted that except this bald allegation, there is nothing on record which shows or suggests that such pamphlets/posters with incorrect name of the petitioner were got prepared and printed by the respondent Nos. 1, 2 & 3 or by their agents.

On the contrary, in the interim reply filed by the respondent No.16, it has come on record that on a notice being issued, the respondent Nos. 1, 2 & 3 had submitted written reply/statements stating that they did not get the erroneous sample ballot paper printed. Respondent Nos.1, 2 & 3 had submitted their written submissions / reply before the Inquiry Authority mentioning therein that their pamphlets were not erroneous and the name of the petitioner wherein was shown correctly. It has further come on record that owner of the press wherein the pamphlets were printed was called and he stated that due to bonafide typographical error, about 200-300 erroneous pamphlets/sample ballot papers were got printed initially, however, once the mistake was realized, the printing was halted, and about all the 200-300 pamphlets/sample ballot papers were destroyed immediately.

For better appreciation of the facts, the averments made in the grounds of the election petition read as under :-

> ***"(A). That the petitoner has filed Nomination as per name shown in the Electoral Roll of his Ward. The Returning Officer accordingly published the list of contesting candidates by showing their correct names. The name of the petitioner was also shown as "Mahaveer Prasad Pareek @ Tiwari".***
>
> *(B).* ***That the respondent No.1, 2 and 3 has materially affected the election for reason that the name of the petitioner was published in Pamphlets S.No.13 as Mahaveer Prasad Pareek @ Shivaji, whereas, the correct name of the petitioner was Mahaveer Prasad Pareek @ Tiwari. The respondent No.1, 2 and 3 by adopting corrupt practice by publishing false Poster with an intention to secure more votes. Due to this malpractice the petitioner has suffered materially and secured only 289 votes. if such malpractice was not adopted than the petitioner would have been secured more votes.***

> ***(C). That the petitioner had made a complaint to Chief Election Commissioner as well as Returning Officer, Suratgarh on 03.12.2018 and 06.12.2018 but have no consequence.***
>
> ***(D). That publication of false Posters by showing wrong name of the petitioner has created serious suspicion among his voters and tantamount to corrupt practice as defined under Section 100(B) of the Act, 1951."***

A bare perusal of the above goes to show that the pleading with respect to the allegation leveled is casual, does not disclose the required details and is not sufficient to bring home the allegation of corrupt practice in the present case. Unless there is a specific averment, allegation and evidence in support of the contention that such material was got published by the respondent Nos. 1, 2 & 3 or their agents, it cannot be presumed that such corrupt practice was adopted by the respondent Nos. 1, 2 & 3.

This court is firmly of the view that for establishing the corrupt practice in the election petition, a person is required to plead material statement of facts with full particulars of any corrupt practice that the petitioner alleges with a full settlement of possible name of the parties who have committed such corrupt practice along with the date and place of commission of such practice. Even a bare perusal of Clause (4) of Section 123 of the Act shows that the publication is required to be reasonably calculated by a candidate or his agent. The word "Candidate" or "his Agent" is the key word and, therefore, in the present case, the allegations that the Pamphlets and the sample ballot papers were published by the respondent Nos. 1, 2 & 3 or his agent showing the incorrect name of the petitioner, is required to be pleaded with complete details and cogent evidence in support thereof. In the present case, the contents of Sub-Clause (4) of Section 123 of the Act are clearly missing.

The Apex Court in the case of **Azhar Hussain V/s Rajiv Gandhi reported in 1986 (SUPP) SCC 315** held as under:-

> ***"11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the***

election petition are not complied with. This Court in Samant N. Balkrishna & Anr. v. George Fernandez & Ors., [1969]3 S.C.C. 239, has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in Udhav Singh v. Madhav Rao Scindia, [1977] 1 S.C.C. 511, the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail."

In the case of ***Dhartipakar Madan Lal Agarwal V/s Rajiv Gandhi reported in 1987 Supp SCC 93,*** the Apex Court observed thus:

"Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner."

In ***Anil Vasudev Salgaonkar V/s Naresh Kushali Shigaonkar reported in (2009) 9 SCC 310,*** the Apex Court in para 57 held *as under :-*

"57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object

> **and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies."**

The Apex Court in the case of ***V. Narayanaswamy V/s C.P. Thirunavukkarasu reported in [(2000) 2 SCC 294]*** observed *as under :-*

> **"Charge of corrupt practice being quasi- criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance."**

In ***Rahim Khan V/s Khurshid Ahmed and others reported in (1974) 2 SCC 660*** *reads as under :-*

> **"An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi- criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded."**

Hon'ble the Supreme Court in the case of ***C.P. John V/s Babu M. Palissery reported in (2014) 10 SCC 547 in para 20*** observed thus:

> **"20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94A and Form No.25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal."**

In view of the law laid down by the Hon'ble Supreme Court and in view of the discussion made above, in the present case there is no cogent documentary evidence except a bald allegation which cannot be considered to come within the ambit of corrupt practice as enshrined in Section 123 of the Representation of the People Act, 1951. The concise statement of the material facts as required along with the full particulars including as full a statement as possible of the names of the parties and the date and place of the commission as mandated under Section 83 of the Act of 1951 is clearly missing in the present election petition. The core issue as to whether the instant election petition disclose any cause of action, a perusal of the averments made in the election petition and the plea taken in the application under Order 7 Rule 11 CPC, makes it crystal clear that the election petition does not disclose any cause of action.

In such view of the matter, the election petition is liable to be dismissed in view of clause (a) of Order 7 Rule 11 of the Code of Civil Procedure and the application filed by the returned candidate under Order 7 Rule 11 of the Code deserve to be allowed. Accordingly, the application filed by the returned candidate under Order 7 Rule 11 of the Code is allowed. As a consequence thereof, the election petition stands dismissed. In the facts and circumstances, the parties shall bear their own cost.

(VINIT KUMAR MATHUR),J

Anil Arora/-

By order,

ASHWANI KUMAR MOHAL,
SECRETARY,
ELECTION COMMISSION OF INDIA.

राज्य केन्द्रीय मुद्रणालय, जयपुर ।